

GAHC010268152024



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./502/2024

AKTAR HOSSEN
S/O CHAN MIA
R/O SUKANTA PALLI, KRISHNAPUR
TELIAMURA, P.O. TELIAMURA
DIST. KHOWAI, TRIPURA,

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. J LASKAR,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

17.12.2024

Heard Mr. J Laskar, learned counsel for the petitioner and Mr. R R Kaushik, learned Additional Public Prosecutor, Assam.

This is an application under Section 442 read with Section 438 of BNSS, 2023 challenging the order dated 07.12.2024 passed by the learned Judicial Magistrate 1st Class, Bongaigaon. On 10.11.2024, a train coming from Agartala to Bangalore had stopped at New Bongaigaon Railway Station. Police found that the said train contained 172 numbers of gunny bags containing

in total 8600 kgs. of areca nuts. Police suspected that the said areca nuts were smuggled from Myanmar.

The petitioner filed an application before the court below seeking custody of the seized areca nuts. The petitioner claimed that he was the owner of the said areca nuts and he had booked the same for transporting to South India.

One Assistant Sub Inspector of Police filed an objection stating that the petitioner had submitted false documents at the time of booking the consignment in the railway.

I have considered the submission of Mr. Laskar and Mr. Kaushik.

Areca nut is a perishable commodity. The Judicial Magistrate 1st Class should have exercised judicial mind while rejecting the prayer for custody. The learned Magistrate refused to give custody only on the basis of the objection of a Police Officer. Law on the subject is well settled if the petitioner had submitted false documents to book the consignment in the railways, somebody should have been aggrieved but none was aggrieved.

For the aforesaid reasons, the impugned order dated 07.12.2024 passed by the learned Judicial Magistrate 1st Class, Bongaigaon is set aside.

The concerned Police Station is directed to give custody of 172 numbers of gunny bags containing in total 8600 kgs. of areca nuts, which was seized in respect of NBQ GRP-I. C. GDE No. 141 dated 10.11.2024 shall be given in custody of the present petitioner on taking a bond of Rs.50,000/-.

With the aforesaid direction, the criminal petition is disposed of.

JUDGE

Comparing Assistant